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	In re:  ICPW Liquidation Corporation, a California corporation, <sup>1</sup>  Debtor and Debtor in Possession.	Lead Case No. 1:17-bk-12408-MB  Jointly administered with: 1:17-bk-12409-MB  Chapter 11 Cases
	In re:  ICPW Liquidation Corporation, a Nevada corporation, <sup>2</sup>  Debtor and Debtor in Possession.	<b>OBJECTION OF JEFFREY CORDES AND WILLIAM M. AISENBERG TO DEBTORS' AND OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS' JOINT PLAN OF LIQUIDATION DATED JANUARY 12, 2018 AND REQUEST FOR TEMPORARY ALLOWANCE OF CLAIMS</b>
	<input checked="" type="checkbox"/> Affects both Debtors	<u>HEARING:</u>
	<input type="checkbox"/> Affects ICPW Liquidation Corporation, a California corporation only	DATE: February 12, 2018 TIME: 2:30 p.m. CTRM: 303 21041 Burbank Blvd. Woodland Hills, CA 91367
	<input type="checkbox"/> Affects ICPW Liquidation Corporation, a Nevada corporation only	

<sup>1</sup> Formerly known as Ironclad Performance Wear Corporation, a California corporation.

<sup>2</sup> Formerly known as Ironclad Performance Wear Corporation, a Nevada corporation.

1        Jeffrey Cordes and William M. Aisenberg (collectively, “Insureds”), hereby file this  
2 objection and request for temporary allowance of claims (the “Objection”) to the Debtors’  
3 and Official Committee of Equity Holders’ Joint Plan of Liquidation Dated January 12, 2018  
4 (the “Plan”), and by and through their respective undersigned counsel of record attorney,  
5 show this Court as follows:

6                          **FACTUAL BACKGROUND**

7        1.        On September 8, 2017 (the “Petition Date”), the Debtors each filed a voluntary  
8 petition for relief under chapter 11 of the title 11 of the United States Code, et seq. (the  
9 “Bankruptcy Code”). [Docket No. 1].

10      2.        On September 12, 2017, the Court entered an order granting the Debtor’s  
11 motion to approve the joint administration of the two chapter 11 cases. [Docket No. 25].

12      3.        On September 20, 2017, the United States Trustee filed a notice of  
13 appointment of an Official Committee of Equity Holders (the “Equity Committee”). [Docket  
14 No. 59].

15      4.        On October 3, 2017, Mr. Cordes timely filed his proof of claim with the  
16 Bankruptcy Court as Claim No. 8-1, asserting a claim in the amount of \$166,906.75, which  
17 includes \$12,850.00 as a priority claim (the “Cordes Claim”).

18      5.        On October 3, 2017, Mr. Aisenberg timely filed his proof of claim with the  
19 Bankruptcy Court as Claim No. 7-1, asserting a claim in the amount of \$129,406.75, which  
20 includes \$12,850.00 as a priority claim (the “Aisenberg Claim,” collectively with the Cordes  
21 Claim the “Insureds’ Claims”).

22      6.        On October 20, 2017, Insureds filed a Motion for Relief from the Automatic  
23 Stay Under 11 U.S.C. § 362. [Docket Nos. 132-136] (the “Motion for Relief”). The Motion  
24 for Relief sought the following relief: (i) to proceed with the American Arbitration  
25 Association Proceeding (the “Arbitration”) and (ii) to pursue insurance coverage proceeds to  
26 which [the Insures] may be, or may become, entitled.

27      7.        On November 1, 2017, the Debtors filed an opposition to the Motion for Relief  
28 and the Equity Committee thereafter filed a joinder to same. [Docket Nos. 168 and 169].

1       8.     On December 7, 2017, following a hearing on the matter, the Court entered an  
2 order temporarily denying and continuing the Motion for Relief (the “Continuance Order”).  
3 [Docket No. 302]. The Continuance Order provided, among other things, that the Debtors or  
4 the Equity Committee may file an objection to the Insureds’ claims or an adversary  
5 proceeding on or before January 26, 2018. In conjunction with the Continuance Order, the  
6 parties filed a Joint Stipulation Relating to the Directors & Officers Insurance Policies (the  
7 “Joint Stipulation”) [Docket No. 300]. The Joint Stipulation permitted the Insureds to use  
8 certain proceeds of the D&O Policies to reimburse their expenses.

9       9.     On January 12, 2018, the Debtors and the Equity Committee (collectively, the  
10 “Plan Proponents”) filed the Plan. [Docket No. 383]. The Plan provides for:

- 11           • Payment to general unsecured creditors (Class 1)<sup>3</sup> in full, with disputed claim  
12 amounts to be escrowed and paid with interest if allowed at a later date; and  
13           • Certain payments to Shareholders of ICPW Nevada as of the Record Date as  
14 Class 2 Claimants.

15       10.    The Plan addresses pre-petition priority wage claims, including a specific  
16 acknowledgement of the \$12,850 priority wage claims filed by the Insureds.<sup>4</sup> The pre-  
17 petition priority wage claims are not classified.

18       11.    The Plan Proponents take the position that there are no unimpaired classes of  
19 claims.

20       12.    On January 26, 2018, the Equity Committee filed a complaint (Adversary  
21 Proceeding No. 18-01011) objecting to the Insureds’ Claims and otherwise making certain  
22 affirmative claims against the Insureds (the “Adversary Proceeding”).

### **OBJECTION AND RESERVATION OF RIGHTS**

#### A.   **The Pre-Petition Priority Wage Claims**

23       Bankruptcy Code section 1123(a)(1) permits certain claims arising under section  
24 507(a) to be unclassified claims. However, pre-petition priority wage claims under section  
25

26  
27       

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<sup>3</sup> Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Plan.

28       <sup>4</sup> Plan at p. 28.

1 507(a)(4) are not included among the exceptions. Therefore, such claims must be classified  
2 and permitted to vote on a plan. *See, e.g., In re Gotcha Intern., L.P.*, 311 B.R. 250, 252 (BAP  
3 9th Cir. 2004) (analyzing a plan with separate classification for priority wage claims).

4 While the Plan acknowledges that the Insureds assert pre-petition priority wage  
5 claims, it does not classify such claims. Rather, the Plan Proponents merely mention that the  
6 Equity Committee will object to such claims.

7 The Plan as written fails to properly classify the pre-petition priority wage claims. As  
8 a result, the Plan impermissibly denies the Insureds' voting rights. The fact that the Equity  
9 Committee objects to the Insureds' priority wage claims does not provide a legal foundation  
10 for refusing to properly classify the claims or refusing to permit the Insureds to vote those  
11 claims pending resolution of an objection. Bankruptcy Rule 3018(a) provides a well-accepted  
12 mechanism for the temporary allowance of disputed claims for the purpose of voting. As set  
13 forth herein, the Insureds are seeking such temporary allowance.

14 For these reasons, the Court should not confirm the Plan as proposed by the Plan  
15 Proponents.

16 **B. Failure to Sufficiently Reserve Funds**

17 The Plan provides that certain funds are to be reserved by the Disbursing Agent.  
18 Moreover, the reserved funds and other amounts on hand are used by the Plan Proponents to  
19 justify the Plan Proponents' position that the Shareholders are receiving full value and are  
20 unimpaired.<sup>5</sup> However, the Plan Proponents grossly underestimate the Estate liabilities and,  
21 as a result, the amounts that should be reserved.

22 Specifically, pursuant to the Debtors' corporate charter, the Insureds have  
23 indemnification rights against the Debtor in relation to Adversary Proceeding for defense  
24 expenses incurred by the Insureds. Such payments are payable to the Insureds in the event  
25 the Debtors do not prevail in the Adversary Proceeding and to the extent not covered by  
26 applicable insurance. The Adversary Proceeding, of course, has not been finally adjudicated.  
27 Permitting the Plan to proceed without reserving funds on account of such indemnification

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28 <sup>5</sup> See Plan at pp. 41-42.

1 rights would preclude the Insureds from recovering their damages and would be tantamount  
2 to denying such right of recovery without due process of law. The Court therefore should  
3 require the Plan to specifically account for such reserved funds. As to amount, the Insureds  
4 assert that their damages are in excess of \$1 million.

5 **C. The Shareholder Claims**

6 The Insureds intend to vigorously oppose the baseless claims against them raised by  
7 the Equity Committee in the Adversary Proceeding, as well as prosecute all of the Insureds'  
8 Claims to allowance and payment. The Insureds reserve all rights with respect to same.

9 The Insureds' Claims are independent of their rights as Shareholders of ICPW Nevada  
10 as of the Record Date. As Shareholders, the Insureds are entitled to receive Class 2 Plan  
11 payments the same as any other claimant in such class. Notably, the Debtors and the Equity  
12 Committee have not (and realistically cannot) contest the fact that the Insureds were  
13 Shareholders as of the Record Date.

14 The Insureds hereby further object to any effort by the Debtors or the Equity Holders  
15 to intertwine the claim matters in the Adversary Proceeding with the Insureds' uncontested  
16 rights as Shareholders under the Plan. However, to the extent that the Court determine the  
17 matters are related, the Insureds separately seek a finding in any order confirming the Plan  
18 that funds payable to the Insureds on account of their rights as Class 2 Claimants will be  
19 reserved.

20 **D. Reservation of Rights**

21 The Insureds should not be prejudiced in this matter based on the Plan Proponents'  
22 decision in November of 2017 to object to the Insureds' efforts to proceed with the  
23 Arbitration. In fact, if the Plan Proponents' had not sought to delay the Arbitration, it is very  
24 likely that the matter would have been resolved by now. Instead, the matter has languished,  
25 unnecessarily costing every party additional time and money. The Insureds reserve their  
26 rights to assert that the underlying disputes should proceed in arbitration, as was contractually  
27 agreed among the parties.

The Insureds further reserve all rights to assert that the Adversary Proceeding is not a core matter and any other argument or issue going to whether the reference should be withdrawn in such matter.

**REQUEST FOR TEMPORARY ALLOWANCE OF CLAIMS PURSUANT TO  
BANKRUPTCY RULE 3018(a)**

The Adversary Proceeding includes an objection to the Insureds' pre-petition priority wage claims. However, such an objection does not simply erase the Insureds' rights to participate in the Plan process as a creditor. Bankruptcy Rule 3018(a) permits temporary allowance of a claim for this exact purpose. *See In re Dynamic Brokers, Inc.*, 293 B.R. 489, 496 (BAP 9th Cir. 2003) ("[T]he holder of a claim that is subject to an unresolved objection is still permitted to vote to accept or reject a chapter 11 plan by way of a temporary allowance in an amount that the court, after notice and hearing, 'deems proper.'").

The Insureds acknowledge that resolution of the Adversary Proceeding may take some time. As such, the Insureds seek temporary allowance of their claims (including the pre-petition priority wage claim that should be separately classified) pursuant to Bankruptcy Rule 3018(a). The Insureds further assert that, given the expedited nature of this case including the consolidation of the disclosure statement hearing and confirmation hearing, the Plan confirmation hearing should act as the opportunity for the Court to temporarily allow the Insureds' Claims for voting purposes.

1 WHEREFORE, for the reasons set forth above, the Insureds (i) object to the Plan for  
2 failing to properly classify pre-petition priority wage claims; (ii) object the Plan Proponents'  
3 failure to properly reserve for the Debtors' indemnification obligations; (iii) object to any  
4 attempt by the Debtors or the Equity Holders to deny the Insureds their rights under the Plan  
5 as Class 2 Claimants; (iv) alternatively seek a reserve of funds payable to the Insureds as  
6 Class 2 Claimants; (v) seek temporary allowance of the Insureds' Claims for voting purposes  
7 pursuant to Bankruptcy Rule 3018(a); and (vi) seek such other and further relief as the  
8 Bankruptcy Court deems just and proper.

9 | Dated: February 5, 2018

Respectfully submitted,

By: /s/ Shiva Delrahim Beck  
Shiva Delrahim Beck

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Attorney for William M. Aisenberg and Jeffrey Cordes

**PROOF OF SERVICE OF DOCUMENT**

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:  
2021 McKinney Avenue, Suite 1600, Dallas, TX 75201.

A true and correct copy of the foregoing document entitled: **OBJECTION OF JEFFREY CORDES AND WILLIAM M. AISENBERG TO DEBTORS' AND OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS' JOINT PLAN OF LIQUIDATION DATED JANUARY 12, 2018 AND REQUEST FOR TEMPORARY ALLOWANCE OF CLAIMS** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) February 5, 2018, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- Ron Bender: [rb@lnbyb.com](mailto:rb@lnbyb.com) (counsel to Debtors)
- Cathrine M Castaldi: [ccastaldi@brownrudnick.com](mailto:ccastaldi@brownrudnick.com) (counsel to Creditors' Committee)
- Russell Clementson: russell.clementson@usdoj.gov (counsel to United States Trustee)
- Aaron S Craig: acraig@kslaw.com, lperry@kslaw.com (Big Time Products, LLC)
- Matthew A Gold: [courts@argopartners.net](mailto:courts@argopartners.net) (counsel to Argo Partners)
- Monica Y Kim: myk@lnbrb.com, [myk@ecf.inforuptcy.com](mailto:myk@ecf.inforuptcy.com) (counsel to Debtors)
- Jeffrey A Krieger: jkrieger@ggfirm.com, [kwoodson@greenbergglusker.com](mailto:kwoodson@greenbergglusker.com); [calendar@greenbergglusker.com](mailto:calendar@greenbergglusker.com); [jking@greenbergglusker.com](mailto:jking@greenbergglusker.com) (counsel to Brighton-Best International, Inc.)
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- Susan K Seflin [sseflin@brutzkusgubner.com](mailto:sseflin@brutzkusgubner.com) (counsel to Province Inc)
- John M Stern [john.stern@oag.texas.gov](mailto:john.stern@oag.texas.gov), [bk-mbecker@oag.texas.gov](mailto:bk-mbecker@oag.texas.gov) (counsel to Texas Comptroller of Public Accounts)
- United States Trustee (SV) [ustpregion16.wh.ecf@usdoj.gov](mailto:ustpregion16.wh.ecf@usdoj.gov) (United States Trustee)
- Sharon Z. Weiss: [sharon.weiss@bryancave.com](mailto:sharon.weiss@bryancave.com), [raul.morales@bryancave.com](mailto:raul.morales@bryancave.com), [geri.anderson@bryancave.com](mailto:geri.anderson@bryancave.com) (counsel to Radians Wareham Holdings, Inc.)
- Douglas Wolfe: [dwolfe@asmcapital.com](mailto:dwolfe@asmcapital.com) (counsel to ASM Capital V, L.P.)

**2. SERVED BY UNITED STATES MAIL:**

On (date) February 5, 2018, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

**Debtor**

ICPW Liquidation Corporation,  
a CA corporation  
15260 Ventura Blvd., 20<sup>th</sup> Floor  
Sherman Oaks, CA 91403

**Debtor**

ICPW Liquidation Corporation,  
a Nevada corporation  
15260 Ventura Blvd., 20<sup>th</sup> Floor  
Sherman Oaks, CA 91403

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state

method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) February 5 2018, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

**Judge's Copy – VIA OVERNIGHT**

Hon. Martin R. Barash  
United States Bankruptcy Court  
21041 Burbank Boulevard, Suite 342  
Woodland Hills, CA 91367

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

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2/5/2018  
Date

Shiva Delrahim Beck  
Printed Name

---

/s/ Shiva Delrahim Beck  
Signature